Devi a/p Vejaya Raman v Krishna Murthi a/l Govindasamy

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24-NCVC-582–08 OF 2016
CHOO KAH SING JC
13 APRIL 2017

Family Law — Matrimonial property — Matrimonial home — Application by wife to prevent husband from evicting the wife and children from matrimonial home — Application by wife to prevent husband from disposing the matrimonial home — Whether plaintiff had right to stay in matrimonial home — Whether defendant could dispose matrimonial home — Law Reform (Marriage and Divorce) Act 1976 ss 76 & 102

The plaintiff and defendant ('the parties') had been married for 23 years. During the marriage, the parties acquired a matrimonial home and had been living in the matrimonial home for the past 13 years with their children. Sometime in 2016, the parties faced domestic problems and often quarreled over trivial matters. The defendant had lodged a police report stating, inter alia, that the plaintiff should be evicted from the matrimonial home because the matrimonial home was registered in his sole name and it belonged to him. The defendant also had an extramarital affair with another woman. Further, a scuffle broke out between the parties and the plaintiff suffered injuries. All these events had led the plaintiff to file this originating summons seeking for an interim order, inter alia, to prevent the defendant from evicting the plaintiff and their children from their matrimonial home. The plaintiff was also seeking for an interim order to prevent the defendant from disposing the said home as the home was her matrimonial home. The defendant opposed the plaintiff's application. He argued that although the plaintiff had prayed for an interim order until the issues including the distribution of the matrimonial home was disposed in a divorce proceeding, the plaintiff had no intention to file a divorce proceeding. Therefore, it was inappropriate for the court to grant an interim order as prayed. Further, the defendant's counsel submitted to the court that the order the plaintiff was seeking was illegal, unenforceable and would cause severe prejudice to the defendant. The defendant's counsel submitted that the court could only grant an order to prevent disposition of the matrimonial assets in the circumstances stated in s 102 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act').

Held, allowing the plaintiff's application with costs of RM1,000:

(1) The plaintiff had an equitable right to stay in the matrimonial home although the plaintiff was not named as a co-registered proprietor of the

matrimonial home. This view was consistent with s 76(3) of the Act which granted the court to order division of assets acquired during marriage by sole effort of one party only (see para 21).

(2) Based on the common law and the Act, the court held that since both husband and wife were equally entitled to claim an interest in the matrimonial home at the end of the marriage, therefore, the parties were presumed in law to have an equal right to stay in the matrimonial home when the marriage was subsisting. In other words, during the subsistence of a marriage, both husband and wife shall have an equal right to enjoy, stay and remain in a matrimonial home as much as they want and as long as they like (see para 22).

(3) The plaintiff had a right to remain in the matrimonial home while the marriage was still subsisting until a court of competent jurisdiction decides otherwise. The husband could not evict the wife and the children from the matrimonial home. Hence, it would not make any difference whether there will be or will not be a divorce proceeding in the future. In the event the marriage comes to an end, the plaintiff's right in the matrimonial home will be protected under s 76 of the Act (see para 24).

(4) In the event the defendant decided to dispose the matrimonial home, the defendant must seek alternative shelter for the plaintiff and the children. The defendant could not take advantage of his legal right as sole proprietor of the said matrimonial home to do what he likes with it. As long as the marriage was subsisting, the defendant had a duty to provide provisions for the plaintiff and the children (see para 28).

[Bahasa Malaysia summary

Plaintif dan defendan ('pihak-pihak') telah berkahwin selama 23 tahun. Semasa perkahwinan itu, pihak-pihak memperolehi rumah perkahwinan dan telah tinggal di rumah perkahwinan selama 13 tahun yang lalu dengan anak-anak mereka. Pada tahun 2016, pihak-pihak menghadapi masalah domestik dan sering bertengkar berhubung perkara-perkara remeh. Defendan telah membuat laporan polis yang menyatakan, antara lain, bahawa plaintif harus diusir dari rumah perkahwinan kerana ia didaftarkan atas nama tunggalnya dan dia adalah pemiliknya. Defendan juga mempunyai hubungan luar nikah dengan wanita lain. Selanjutnya, satu pergelutan berlaku antara pihak-pihak dan plaintif mengalami kecederaan. Semua peristiwa ini telah membawa plaintif untuk memfailkan saman pemula ini untuk memohon perintah interim, antara lain, untuk menghalang defendan dari mengusir plaintif dan anak-anak mereka dari rumah perkahwinan mereka. Plaintif juga meminta perintah interim untuk menghalang defendan daripada menjual rumah perkahwinan. Defendan menentang permohonan plaintif. Defendan mendakwa bahawa walaupun plaintif telah meminta untuk perintah interim sehingga isu-isu termasuk pembahagian rumah perkahwinan dilupuskan

dalam proses perceraian, plaintif tidak berhasrat untuk memfailkan prosiding perceraian. Oleh itu, adalah tidak sesuai untuk mahkamah memberikan perintah sementara sebagai dipohon. Selanjutnya, peguam defendan mengemukakan kepada mahkamah bahawa perintah yang dipohon oleh plaintif adalah tidak sah, tidak boleh dikuatkuasakan dan akan menyebabkan prasangka yang teruk terhadap defendan. Peguam defendan juga mengemukakan bahawa mahkamah hanya boleh memberikan perintah untuk melarang pelupusan aset perkahwinan dalam keadaan yang dinyatakan dalam s 102 Pembaharuan Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta').

Diputuskan, membenarkan permohonan plaintif dengan kos RM1,000:

(1) Plaintif mempunyai hak yang saksama untuk tinggal di rumah perkahwinan walaupun plaintif tidak dinamakan sebagai pemilik berdaftar bersama rumah suami isteri. Pandangan ini selaras dengan s 76(3) Akta yang membenarkan mahkamah memerintahkan pembahagian aset yang diperolehi semasa perkahwinan dengan usaha tunggal satu pihak sahaja (lihat perenggan 21).

(2) Berdasarkan *common law* dan Akta, mahkamah berpendapat bahawa kerana suami dan isteri sama-sama berhak untuk menuntut kepentingan di rumah perkahwinan pada penceraian, oleh itu, pihak-pihak dianggap sebagai hukum untuk memiliki kesamaan hak untuk tinggal di rumah perkahwinan apabila perkahwinan itu masih wujud. Dalam erti kata lain, semasa kewujudan perkahwinan tersebut, suami dan isteri hendaklah mempunyai hak yang sama untuk menikmati, menetap dan kekal di rumah perkahwinan sebagaimana yang mereka menghendakinya dan selagi mereka suka (lihat perenggan 22).

(3) Plaintif mempunyai hak untuk kekal di rumah perkahwinan semasa perkahwinan itu masih wujud sehingga mahkamah yang mempunyai bidang kuasa yang kompeten memutuskan sebaliknya. Suami tidak boleh mengusir isteri dan anak-anak dari rumah perkahwinan. Oleh itu, ia tidak akan membuat apa-apa perbezaan sama ada akan berlaku atau tidak akan berlaku perceraian pada masa hadapan. Sekiranya perkahwinan berakhir, hak plaintif di rumah perkahwinan akan dilindungi di bawah s 76 Akta (lihat perenggan 24).

(4) Sekiranya defendan memutuskan untuk melupuskan rumah perkahwinan, defendan mesti mencari perlindungan alternatif untuk plaintif dan anak-anak. Terdakwa tidak dapat memanfaatkan hak hukumnya sebagai pemilik tunggal rumah suami rumah tersebut untuk melakukan apa yang dia suka dengannya. Selagi perkahwinan masih wujud, defendan mempunyai kewajiban untuk menyediakan peruntukan bagi plaintif dan anak-anaknya (lihat perenggan 28).]

Notes

For a case on matrimonial property, see 7(3) *Mallal's Digest* (5th Ed, 2017 Reissue) para 4846.

Cases referred to

Bendall v Mcwhirter [1952] 1 All ER 1307, CA (refd)
Jayakumari a/p Arul Pragasam v Suriya Narayanan a/l V Ramanathan [1996] 4 MLJ 421; [1996] 1 LNS 74, HC (refd)
Wachtel v Wachtel [1973] 1 All ER 829, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 24(a), Schedule, para 6
Law Reform (Marriage and Divorce) Act 1976 ss 76, 76(2), (3), 102

Krishna Vaine (Kamarudin & Partners) for the plaintiff.
Salma Sakeena (Azwad Ihsan & Co) for the defendant.

Choo Kah Sing JC:

INTRODUCTION

[1] The relationship between the parties in the proceeding is husband and wife. The wife/plaintiff filed this originating summons ('OS') seeking for an interim order, inter alia, to prevent the husband/defendant from evicting the plaintiff and the children from a house having a postal address No 4, Jalan Suasa 4, Taman Sri Skudai, 81300 Skudai, Johor. The plaintiff is also seeking for an interim order to prevent the defendant from disposing the said house. The plaintiff averred that the house is her matrimonial home ('the matrimonial home').

[2] On 22 February 2017, this court allowed the plaintiff's application. An interim order was granted in favour of the plaintiff until all matters are resolved in a divorce proceeding. The defendant was not satisfied with the decision of this court and filed an appeal to the Court of Appeal. This judgment serves as the reasons for the decision. The reasons are set out as below.

BRIEF FACTS

[3] The parties have been married for 23 years. Their marriage was solemnised under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA') on 9 April 1994. They have three children born in the marriage. They are aged 21, 12 and 5 respectively. During the marriage, the parties acquired the matrimonial home. Since then, the parties and the children have been living in the matrimonial home for the past 13 years.

A **[4]** Sometime last year, the parties faced domestic problems. They often quarrelled over trivial matters. On one occasion, on 20 August 2016, a quarrel broke out between the plaintiff and defendant. The defendant lodged a police report via report SKUDAI/007087/16 alleging that the plaintiff had threatened to evict him from the matrimonial home. The defendant stated in
B his police report that the plaintiff should get out from the matrimonial home as a pre-emptive measure, because the matrimonial home is registered in his sole name and belonged to him.

C **[5]** On the other hand, the plaintiff stated that it was the defendant who had threatened to evict the plaintiff and the children from the matrimonial home. The parties' relationship began to break down when the plaintiff had accused the defendant of having an extramarital affair with a woman by the name of Sheran.

D **[6]** The plaintiff's accusation was not without basis. On one occasion, the plaintiff's eldest son, Satthes a/l Krishna Murthi, spoke to the said Sheran and told her to stop seeing his father. The defendant found out about the conversation between his eldest son and Sheran. He was upset by his son's
E conduct. On 20 August 2016, the defendant confronted his eldest son and a struggle broke out between the father and son. The son was injured, he then lodged a police report via SKUDAI/007103/16 dated 21 August 2016 against his father, the defendant.

F **[7]** On another occasion, on 15 October 2016, the plaintiff and the children saw the defendant together with Sheran. They approached the defendant and Sheran. A scuffle broke out between the plaintiff and the defendant. The plaintiff suffered injury in the scuffle and lodged a police report via police report TAMPOI/013217/16.

G **[8]** The above were some of the untoward incidents that culminated in the filing of this OS by the plaintiff.

THE FINDING OF THIS COURT

H **[9]** The defendant opposed the plaintiff's application. He argued that although the plaintiff had prayed for an interim order until the issues, including the distribution of the matrimonial home, are disposed in a divorce proceedings, the plaintiff had no intention to file a divorce proceeding.
I Therefore, it is inappropriate for the court to grant an interim order as prayed, the defendant further said.

[10] The defendant's counsel submitted that the order the plaintiff was seeking is illegal, unenforceable and will cause severe prejudice to the

defendant. The defendant's counsel submitted that the court can only grant an order to prevent disposition of the matrimonial assets in the circumstances stated in s 102 of the LRA. In this case, none of the parties has filed a divorce proceeding. A

[11] The court will first deal with the issue raised by the defendant that the plaintiff has no intention to file a divorce proceeding, and therefore, the interim order ought not to be granted. The issue raised gives rise to the question whether the plaintiff has any right over the matrimonial home if she has no intention to file a divorce proceeding? In other words, whether a married woman has any right in a matrimonial home? B C

[12] The defendant did not deny the house which the plaintiff and the children are living now is their matrimonial home. The defendant also did not deny he, the plaintiff and the children have been living in the matrimonial home for the past 13 years. Hence, it is established that the house indeed is the family matrimonial home. Now, the question is does the plaintiff has any right in the matrimonial home while the marriage is still subsisting? D

[13] In common law, a matrimonial home is recognised as part of the matrimonial asset. In *Wachtel v Wachtel* [1973] 1 All ER 829 (CA) Lord Denning has vividly explained as follows: E

> It refers to those things which are *acquired by one* or other or both of the parties, *with intention that they would be continuing provisions for them and their children during their joint lives, and used for this benefit of the family as a whole* ... F

[14] His Lordship explained that a matrimonial home is considered as an asset of capital nature as opposed to those assets of revenue-producing nature, such as the parties' earning powers. Within the same paragraph of the judgment, His Lordship further explained as follows: G

> When the marriage comes to an end, *the capital assets have to be divided*: the earning power each has to be allocated.

[15] The above excerpts proffer that both parties in a marriage have a right over the matrimonial assets, including the matrimonial home, when the marriage comes to an end. H

[16] Lord Denning in an earlier decision in *Bendall v Mcwhirter* [1952] 1 All ER 1307 at p 1310, stated as follows: I

> A wife is no longer her husband's chattel. She is beginning to be regarded by the law as a partner in all affairs which are their common concern. Thus the husband can no longer turn her out of the matrimonial home. She has as much right as he to stay there even though the house does stand in his name.

[17] The above principle of law in *Bendall v Mcwhirter* has been accepted in Malaysia in the case of *Jayakumari a/p Arul Pragasam v Suriya Narayanan a/l V Ramanathan* [1996] 4 MLJ 421; [1996] 1 LNS 74. Justice James Foong (as he then was) stated as follows:

> This proposition of the wife's right to remain in the matrimonial home is based on the ruling by Denning LJ (as he then was) in the case of *Bendall v McWhirter* [1952] 2 QB 466, where he affirmed that a wife is not without rights in the matrimonial home even though it belongs to the husband, and *her right to stay in the matrimonial home is presumed in law to have been conferred upon her by her husband flowing from the concept of marriage.*

[18] Based on the above authorities, it is recognised that a married woman has acquired an equitable right over a matrimonial home in a marriage. A married woman has as much right as her husband to remain in a matrimonial home, even if the house is in the sole name of the husband, while the marriage is subsisting.

[19] In Malaysia, s 76(2) of the LRA states: '… the court shall incline towards equality of division'. This connotes our law recognises both husband and wife ought to have equal sharing of the division of matrimonial assets when a marriage comes to an end. Thus, an inference could be made out that a married woman should also have a right over the matrimonial assets during the subsistence of the marriage.

[20] It would be unjust to say that a married woman will have a right over the matrimonial assets only when the marriage comes to an end, and she is not entitled to any right to the matrimonial assets while the marriage is subsisting.

[21] This court is of the view that the plaintiff has an equitable right to stay in the matrimonial home although the plaintiff is not named as a co-registered proprietor of the matrimonial home. This view is consistent with s 76(3) of the LRA which grants the court to order division of assets acquired during marriage by sole effort of one party only. It states as follows:

> (3) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of *any assets acquired during the marriage by the sole effort of one party* to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

[22] Based on the common law and the LRA, this court holds that since both husband and wife are equally entitled to claim an interest in the matrimonial home at the end of the marriage, therefore, the parties are presumed in law to have an equal right to stay in the matrimonial home when the marriage is subsisting. In other words, during the subsistence of a marriage, both husband

and wife shall have an equal right to enjoy, stay and remain in a matrimonial home as much as they want and as long as they like.

[23] It is this court's considered view that during the subsistence of a marriage, both parties shall have the same equitable right to enjoy the matrimonial home as a continuing provision.

[24] Applying the above proposition to this case, the plaintiff shall have a right to remain in the matrimonial home while the marriage is still subsisting. She is entitled to continue to remain in the matrimonial home as long as she likes so long as the marriage is still subsisting until a court of competent jurisdiction decides otherwise. The husband could not evict the wife and the children from the matrimonial home. Hence, it would not make any difference whether there will be or will not be a divorce proceeding in the future. The plaintiff is seeking an interim order to protect her equitable right in the matrimonial home as long as the marriage does not come to an end. In the event the marriage comes to an end, the plaintiff's right in the matrimonial home will be protected under s 76 of the LRA.

[25] With regard to the jurisdiction of this court to grant an interim order to prevent the plaintiff from disposing the matrimonial home, this court refers to s 24(a) of the Courts of Judicature Act 1964 which states as follows:

> 24 Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include —
>
> (a) jurisdiction under any written law relating to divorce and matrimonial causes.

[26] Hence, any matter related thereto and/or in connection with *matrimonial* causes the High Court shall have jurisdiction. In the Schedule of the same Act, para 6 grants the High Court additional powers to order, inter alia, for the interim preservation of property the subject matter of any cause or matter by sale or by injunction or in any other manner whatsoever.

[27] The interim order sought by the plaintiff was in relation to the matrimonial home. As explained above, the plaintiff has an equitable right to the matrimonial house, and the defendant could not simply dispose the house and deprive the plaintiff of her equitable right.

[28] In the event the defendant decides to dispose the matrimonial home, the defendant must seek alternative shelter for the plaintiff and the children. The defendant could not take advantage of his legal right as sole proprietor of the said matrimonial home to do what he likes with it. As long as the marriage

A is subsisting, the defendant has a duty to provide provisions for the plaintiff and the children.

[29] This court is of the considered view that in the present case, the plaintiff is entitled to prevent the defendant from evicting her and the children from the B matrimonial home as well as to prevent the defendant from disposing the matrimonial home.

CONCLUSION

C **[30]** Based on the above reasons, this court allowed the plaintiff's application and ordered the defendant to pay costs of RM1,000 to the plaintiff.

Application allowed with costs of RM1,000.

D Reported by Lee TJ

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